

<p style="text-align: center;">KENTUCKY CORRECTIONS Policies and Procedures</p>	<p>Policy Number</p> <p style="text-align: center;">27-16-01</p> <p>Date Filed</p> <p style="text-align: center;">January 12, 2005</p>	<p>Total Pages</p> <p style="text-align: center;">9</p> <p>Effective Date</p> <p style="text-align: center;">May 26, 2005</p>
<p>Authority/References</p> <p>KRS 16.220, 61.900, 196.030, 196.070 196.075, 218A.500, 237.090, 431.005, 439.348, 439.470, 439.480, 500.080, 500.090, 533.050, 533.060, 439.430 P&P ACA 3-3177</p>	<p>Subject</p> <p style="text-align: center;">SEARCH SEIZURE, CHAIN OF CUSTODY, DISPOSAL OF EVIDENCE</p>	

I. DEFINITIONS

“Chain of evidence” means documented accountability for the custody of evidence from the moment it reaches the officer’s custody until the moment it is offered as evidence, or the knowledge or record of each person who has come into possession of a physical object from the time it is discovered until it is presented in a hearing.

“Contraband” means an article or thing that an offender under the jurisdiction of Probation or Parole is prohibited from obtaining, possessing or exercising control over, either by statute, departmental regulation or special condition set by the releasing authority or special instruction of the officer.

“Drug paraphernalia” is defined in KRS 218A.500.

“Dangerous instrument” is defined in KRS 500.080(3).

“Deadly weapon” is defined in KRS 500.080(4).

“Reasonable suspicion” means a degree of certainty based on facts and other reasonable inferences drawn therefrom that cause one to believe that a person has violated the law or conditions of supervision. Anything that causes an officer to reasonably believe a condition of supervision has been violated creates a reasonable suspicion. It is not established based on the offender’s reputation, a casual rumor, or a hunch. However, reasonable suspicion can be established through information from law enforcement personnel, relatives, neighbors, or other sufficiently trustworthy sources, including anonymous tips. To justify actions based upon reasonable suspicion, officers must point to specific facts and reasonable inferences and explain how they drew their conclusions from those facts in light of their experience. Unspecified suspicions or mere hunches fall short of providing reasonable grounds for actions, which are permitted only on the basis of reasonable suspicion. The following are a few criteria, which may be considered when determining reasonable suspicion:

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	2

- a. Demeanor of the individual
- b. Prior background or character
- c. What the individual is carrying or appears to be carrying
- d. The time of the day or night the individual is observed
- e. An apparent effort to avoid identification or confrontation by officials
- f. Gait and manner
- g. Manner of dress
- h. Overheard conversations
- i. Information received from a third person
- j. Whether the suspect is with others whose conduct is reasonably suspect
- k. Apparent effort to conceal an article or activity

“Search warrant” means an order signed by a judge or his designee, directing a law enforcement officer to conduct a search of a designated object or place for the purpose of seizing designated property or kinds of property.

“unreasonable search” means a search which in light of the circumstances is not conducted at a reasonable time and in a reasonable manner. For example: searches made too frequently, searches for the purpose of harassing an offender, search for prolonged periods of time, or for an arbitrary or oppressive reason.

II. POLICY and PROCEDURE

- A. An offender shall be subject to a personal search, search of his residence, or any other property under his control. The basis for any search shall be substantiated by reasonable suspicion that the performance of the search may produce evidence to support the alleged violation.
- B. Any evidence confiscated from an offender shall be properly secured and the chain of evidence shall be fully documented.
- C. If an officer conducts a warrantless search, a consent search, or a search pursuant to a warrant, he shall file a special supervision reporting document.

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	3

D Search Without Consent

If an officer has reasonable suspicion to believe that an offender is in possession of contraband or in violation of the conditions of his supervision, the officer may conduct an investigation and search to validate the suspicion or information received. Each case shall be discussed with the District Supervisor or designee, if possible, before any action is taken by the officer and the purpose of the search articulated.

Warrantless Search

1. If reasonable suspicion exists to believe that an offender is violating a condition of supervision or the officer has possession of evidence of a violation of the terms and conditions of his supervision, an officer may search without a warrant.
2. If exigent or emergency circumstances exist, an officer may search without a warrant. Exigent circumstances shall include the following:
 - a. If delay may endanger the life of the officer or the lives of others,
 - b. If there is a likelihood that the offender will escape if not swiftly apprehended,
 - c. To prevent the offender from destroying or distributing evidence,
 - d. If delay may enhance the ability of the offender to make an effective, forcible resistance.

E. Consent Search

1. If an offender under the jurisdiction of Corrections gives his consent to the officer to search his property or person, it shall be considered a lawful and reasonable search if the consent is intelligently, freely and voluntarily given and is clear and explicit. In these cases the officer, for his protection and documentation, shall have the offender sign a statement giving his consent to the search. If the offender refuses to sign the consent and circumstances support a warrantless search, the officer may proceed.
2. Consent may be given to search a residence by a third party, including:
 - a. Spouse

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	4

The spouse of the offender is in the position to consent to a search and seizure of property in their home if each spouse normally exercises equal control of the property or residence.

b. Co-tenants

Co-tenants may consent to a search for each other. The scope of the search shall be limited to the area over which the consenting occupant has joint use or control.

c. Parents

A parent may consent to a search of his child's room or effects in the premises controlled by the parent and over which the parent may exercise dominion or control.

F. Warrants

1. If time permits, the officer may obtain a warrant prior to searching an offender's residence or vehicle. In the absence of exigent circumstance or consent, if the search is based on probable cause to believe that a new crime has been committed and not because of reasonable suspicion that a condition of supervision has been violated, a warrant shall be obtained.
2. The officer shall follow the guidelines for obtaining a search warrant as set out in his judicial district.
3. The search warrant shall be executed immediately after the issuance of the warrant. The officer shall obtain assistance from other Probation and Parole officers or local law enforcement officials. The officer shall never execute a search warrant alone.
4. If a search warrant is obtained, upon arrival at the designated location, the officer shall knock on the door, identify himself, state his purpose, and await refusal or silence before forcing entry into the premises. The search warrant shall be read to the offender or other occupant of the residence. If nobody is at the residence at the time of the search, the warrant shall be read aloud prior to the search being conducted.

G. Search of Property Other Than Residence

Searches of motor vehicles, aircraft and watercraft, which are owned by or in the control of an offender under supervision, may be conducted by an officer without a warrant if there is reasonable suspicion that the vehicle contains evidence of a violation of the conditions of supervision.

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	5

H. Pat Down Frisk

The officer may frisk an offender if there is reasonable suspicion to believe that the offender is concealing contraband on or about his person or for security purposes.

I. Conducting the Search

1. If feasible, the officer shall be accompanied by another Probation and Parole officer or a local law enforcement official for the purpose of conducting the search of an offender's residence, auto, or other property.
2. The search shall be conducted in a reasonable manner.
3. Only those areas occupied solely by the offender and those areas of common habitation may be searched.
4. If the offender is not the sole occupant of the residence or owner of the vehicle or other property, an effort shall be made to determine ownership before any property is removed.

J. Plain View Doctrine

Any object falling in plain view of an officer, who has the authority to be in a position to have that view by virtue of his job description, departmental policy and to ensure public safety, shall be subject to seizure. The plain view doctrine shall be applied to anything that an officer becomes aware of by use of his five senses while in a lawful position.

K. Evidence: The Chain of Custody

1. Probation and Parole Officer's Immediate Responsibility
 - a. Once the evidence is confiscated and in the custody of the officer, he shall, as soon as practicable, transport the evidence to the local custodian of confiscated items as directed in KRS 67.592. This local custodian shall be the local police department or county sheriff.
 - b. If the evidence is confiscated at a time other than normal working hours, when the evidence officer is unavailable, or if the local custodian fails or refuses to take custody of the evidence, the officer may maintain the evidence in his custody until the evidence may be secured.

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	6

2. Marking Evidence for Identification

- a. Any confiscated item may be placed in an envelope or plastic bag prior to transporting to the designated property custodian. If property is confiscated, a chain of custody document shall be used.
- b. The information listed with each item shall be recorded for identity purposes. The following items may be confiscated by the officer:

(1) Firearm

List caliber, brand, type, barrel length, finish, model number, and serial number.

(2) Weapon (Other than Firearm)

List the type, brand name, size, color, and serial number, if applicable.

(3) Drugs and Medications

List the type and amount and specify if pill or liquid form.

(4) Alcoholic Beverages

List the number of containers, container type, size, brand, and alcohol content. Indicate whether the seal is broken on the container.

(5) Other Types of Property and Evidence

List type of item, brand name, color, size, model, and serial number, if applicable, and brief description of the evidence.

(6) Money

The total amount shall be noted. The denominations, serial numbers, particular number of bills or coins and any distinguishing characteristics like tears, discoloration, or marks shall be indicated.

3. Removal or Examination of the Evidence from the Secured Location

- a. Kentucky State Police Lab Examination

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	7

- (1) If the evidence requires examination by the Kentucky State Police Lab, a designated officer shall:
 - (a) personally transport the evidence to the crime lab,
 - (b) if feasible, upon approval of the District Supervisor or designee, coordinate the transportation of evidence with another law enforcement agency; or
 - (c) send the evidence through the U.S. Mail by CERTIFIED Mail.
- (2) A receipt of verification shall be maintained with the evidence log sheet.
- (3) The original examination result document shall, following receipt from the Kentucky State Police Lab, be filed with the evidence in the secured location. One (1) copy shall be maintained in the evidence log and one (1) copy shall be maintained in the case folder.

b. Examination or Removal of Evidence:

- (1) If the evidence is viewed, examined, or taken from the secured area, for a specific legitimate purpose, there shall be two (2) persons present when the locker is opened.
- (2) If the item is removed from the secured area for court or hearing, the appropriate portion of the chain of custody document shall be filled out. The officer removing the evidence shall take responsibility for the item.
- (3) If the evidence is removed for the purpose of administration, court, or examination purposes, the evidence shall be promptly returned to the secured area and the date and time of return shall be noted on the evidence envelope.

- c. If evidence is released to the custody or control of another authorized person, he shall sign the evidence out on the chain of custody section, including date and time obtained, for accountability.

4. Disposal of Evidence

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	8

a. Time Tables

- (1) If the evidence, except a firearm, is seized by an officer from an offender and the evidence is not used for a revocation procedure, the evidence shall be disposed of within thirty (30) days of confiscation.
- (2) Evidence that is used in revocation proceedings may be disposed of one (1) year from the date of final disposition of the case involving the evidence.

b. Method of Disposal

- (1) Evidence may be disposed of in accordance with a court order.
- (2) If the court order is not specific regarding the method of disposal, the officer shall consult the District Supervisor or designee before any action is taken. Methods of disposal may include:
 - (a) Turning the evidence over to the State Police for disposal.
 - (b) Pouring alcoholic beverages down a drain in the presence of two (2) witnesses.
 - (c) Burning at a designated location.

The District Supervisor or designee and one (1) witness shall be present if evidence is disposed of in the district.

 - (d) If the officer uses a firearm as evidence in a revocation hearing, the firearm shall be transferred to the Kentucky State Police pursuant to the requirements of KRS 16.220, 237.090, and 500.090.
- (3) Methods of disposal, other than those listed above, shall have the prior approval of the Assistant Director of the Division of Probation and Parole or his designee.

Policy Number	Effective Date	Page
27-16-01	May 26, 2005	9

- (4) If evidence is ordered sold by the court, it shall be done in accordance with Corrections Policy and Procedures regarding Disposal of Surplus Property.
- (5) The District Supervisor or designee shall inventory evidence in a secure area on a semi-annual basis to ensure disposal according to timetables outlined.

5. Proof of Ownership by a Third Party

Evidence that is not an illegal substance, and is seized by an officer during a search, shall be returned to its lawful owner if proper proof of ownership is established.

If a gun is confiscated during a search of an offender's residence, and others reside there, if a co-tenant is able to prove ownership of the gun, it shall be returned to him.

Prior to releasing any evidence to a third party, the releasing authority, District Supervisor or designee shall be advised. A document shall be signed by the third party and witnessed by two (2) people acknowledging receipt of the item confiscated. The signed document shall be maintained in the case folder.

CONSENT TO SEARCH

I, _____, having control over the property listed below, give my consent for the property to be searched by officers of the Kentucky Department of Corrections, Division of Probation and Parole and other officers as may assist them. I understand that items found in this search may be used as evidence in court or administrative proceedings. I have given this consent of my own free will, without duress, threats, or promise.

PROPERTY:

Signed: _____ Date: _____

Witness: _____ Date: _____

Witness: _____ Date: _____

Search Officer: _____

Search Officer: _____

Search Officer: _____

**PROBATION AND PAROLE
CHAIN OF CUSTODY DOCUMENT**

Subject's Name: _____

Method of search

ξWarrant ξConsent ξVehicle ξPlain View ξFrisk ξIncident to Arrest ξExigent/Emergency ξOther (Explain)

Description of Evidence or Item Confiscated: _____

Printed Name and Title of Confiscating Person: _____

Date and Time of Confiscation: _____

Signature of Confiscating Person: _____

Witnessing Signature: _____

Other Persons in Possession of Confiscated Evidence/Item(s)

<u>Printed Name</u>	<u>Signature</u>	<u>Date</u>	<u>Time</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name and title of Person Securing Confiscated Item(s): _____

Date and Time of Securing: _____

Signature of Securing Individual: _____

Witnessing Signature: _____

Other Persons in Possession of Confiscated Evidence/Item(s)

<u>Printed Name</u>	<u>Signature</u>	<u>Date</u>	<u>Time</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____